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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 298

Introduced by Assembly Member Brownley

February 9, 2011

An act to add Chapter 5.3 (commencing with Section 42280) to Part 3 of Division 30 of, and to repeal Section 42289 of, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 298, as amended, Brownley. Solid waste: single-use carryout bags.

Existing law, until January 1, 2013, requires an operator of a store, as defined, to establish an at-store recycling program that provides to customers the opportunity to return clean plastic carryout bags to that store and prohibits a city, county, or other local public agency from taking specified regulatory actions with regard to the recycling of plastic carryout bags.

With specified exceptions, the bill would, as of January 1, 2014, prohibit stores that have a specified amount of dollar sales or retail floor space from providing a single-use carryout bag to a customer. The bill would require these stores to meet other specified requirements regarding providing recycled paper bags, compostable bags, or reusable bags to customers.

The bill would also require these stores, on and after January 1, 2013, to provide a plastic bag collection bin for their customers, for the purpose of collecting and recycling single-use plastic bags and reusable bags.

The bill would, on and after July 1, 2015, additionally impose these prohibitions and requirements on convenience food stores, foodmarts, and certain other specified stores, except for the requirement to provide plastic bag collection bins.

The bill would, beginning January 1, 2015, require a reusable grocery bag producer to submit to the Department of Resources Recycling and Recovery a biennial certification, including a certification fee established by the department, that certifies that each type of reusable grocery bag that is imported, manufactured, sold, or distributed in the state and provided to a store for sale or distribution meets specified requirements. The bill would require the department to deposit the certification fees into the Reusable Bag Account, which would be established by the bill in the Integrated Waste Management Fund. The bill would require that moneys in the account be expended by the department, upon appropriation by the Legislature, to implement the certification requirements. A violation of these certification requirements would be subject to an administrative civil penalty assessed by the department. The department would be required to deposit these penalties into the Penalty Subaccount, which the bill would create in the Reusable Bag Account, for expenditure by the department, upon appropriation by the Legislature, to implement the certification requirements.

The bill would require the department, by January 1, 2016, to submit a report to the Legislature regarding the implementation of the bill's provisions. The bill would repeal this report requirement on January 1, 2017.

The bill would allow a city, county, or city and county, or the state to impose civil penalties for a violation of the bill's requirements, except for the certification requirements. The bill would require these civil penalties to be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action, and would allow the penalties collected by the Attorney General to be expended by the Attorney General, upon appropriation by the Legislature, to enforce the bill's provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 5.3 (commencing with Section 42280) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 5.3. SINGLE-USE CARRYOUT BAGS

Article 1. Definitions

42280. For purposes of this chapter, the following definitions shall apply:

(a) "Department" means the Department of Resources Recycling and Recovery.

(b) "Postconsumer recycled material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. Postconsumer recycled material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.

(c) "Recycled paper bag" means a paper carryout bag provided by a store to a customer at the point of sale that meets all of the following requirements:

(1) (A) Except as provided in subparagraph (B), the paper carryout bag contains a minimum of 40 percent postconsumer recycled materials.

(B) An eight pound or smaller recycled paper bag shall contain a minimum of 20 percent postconsumer recycled material.

(2) Is accepted for recycling in curbside programs in a majority of households that have access to curbside recycling programs in the state.

(3) Is capable of composting, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard Specification for Compostable Plastics D6400.

(4) Has printed on the bag the name of the manufacturer, the location (country) where the bag was manufactured, and the minimum percentage of postconsumer content.

(d) (1) "Reusable grocery bag" on or before June 30, 2015, means either of the following:

1 (A) A bag made of cloth or other machine washable fabric that
2 has handles.

3 (B) A durable plastic bag with handles that is at least 2.25 mils
4 thick and specifically designed for multiple reuses.

5 (2) “Reusable grocery bag” on and after July 1, 2015, means a
6 bag that meets the requirements of Section 42287.

7 (e) “Reusable grocery bag producer” means a person or entity
8 that does any of the following:

9 (1) Manufactures reusable grocery bags for sale or distribution
10 to a store.

11 (2) Imports reusable grocery bags into this state, for sale or
12 distribution to a store.

13 (3) Sells or distributes reusable bags to a store.

14 (f) (1) “Single-use carryout bag” means a bag made of plastic,
15 paper, or other material, that is provided by a store to a customer
16 at the point of sale and that is not a reusable grocery bag that meets
17 the requirements of Section 42287, on and after July 1, 2015, and
18 paragraph (1) of subdivision (d) of this section on or before June
19 30, 2015.

20 (2) A single-use carryout bag does not include either of the
21 following:

22 (A) A bag provided by a pharmacy pursuant to Chapter 9
23 (commencing with Section 4000) of Division 2 of the Business
24 and Professions Code to a customer purchasing a prescription
25 medication.

26 (B) A nonhandled bag used to protect a purchased item from
27 damaging or contaminating other purchased items when placed in
28 a recycled paper bag or reusable grocery bag.

29 (g) “Store” means a retail establishment that meets any of the
30 following requirements:

31 (1) A full-line, self-service retail store with gross annual sales
32 of two million dollars (\$2,000,000), or more, and which sells a
33 line of dry grocery, canned goods, or nonfood items and some
34 perishable items.

35 (2) Has at least 10,000 square feet of retail space that generates
36 sales or use tax pursuant to the Bradley-Burns Uniform Local Sales
37 and Use Tax Law (Part 1.5 (commencing with Section 7200) of
38 Division 2 of the Revenue and Taxation Code) and has a pharmacy
39 licensed pursuant to Chapter 9 (commencing with Section 4000)
40 of Division 2 of the Business and Professions Code.

1 (3) Is a convenience food store, foodmart, or other entity that
2 is engaged in the retail sale of a limited line of goods, generally
3 including milk, bread, soda, and snack foods, and that holds a Type
4 20 or 21 license issued by the Department of Alcoholic Beverage
5 Control.

6
7 Article 2. Carryout Bag Regulation
8

9 42281. (a) Except as provided in Section 42282, the
10 requirements of this section apply only to a store, as defined in
11 paragraph (1) or (2) of subdivision (g) of Section 42280.

12 (b) (1) On and after January 1, 2014, a store shall not provide
13 a single-use carryout bag to a customer at the point of sale, except
14 as provided in this section.

15 (2) On January 1, 2014, until June 30, 2015, a store may provide
16 to a customer a reusable grocery bag, as defined in paragraph (1)
17 of subdivision (d) of Section 42280.

18 (3) On and after July 1, 2015, a store shall only provide to a
19 customer a reusable grocery bag, as defined in paragraph (2) of
20 subdivision (d) of Section 42280, that meets the requirements of
21 Section 42287.

22 (c) A store ~~may~~ *shall* make reusable grocery bags available for
23 purchase by a customer.

24 (d) Notwithstanding any other law, on and after January 1, 2014,
25 a store shall provide a customer participating in the California
26 Special Supplemental Food Program for Women, Infants, and
27 Children pursuant to Article 2 (commencing with Section 123275)
28 of Chapter 1 of Part 2 of Division 106 of the Health and Safety
29 Code and a customer participating in the Supplemental Food
30 Program pursuant to Chapter 10 (commencing with Section 15500)
31 of Part 3 of Division 9 of the Welfare and Institutions Code, with
32 a reusable grocery bag or a recycled paper bag at no cost at the
33 point of sale.

34 (e) Notwithstanding subdivision (b), a store may make available
35 for purchase at the point of sale a recycled paper bag.

36 (f) Notwithstanding subdivision (b), a store may make available
37 for purchase at the point of sale a compostable bag, that at a
38 minimum meets the American Society for Testing and Materials
39 (ASTM) Standard Specification for Compostable Plastics D6400,

1 if both of the following requirements are met in the jurisdiction
2 where the compostable bag is sold:

3 (1) A majority of the residential households in the jurisdiction
4 have access to curbside collection of foodwaste for composting.

5 (2) The governing authority for the jurisdiction has voted to
6 allow stores in the jurisdiction to sell to a consumer at the point
7 of sale a compostable bag at a cost not less than the actual cost of
8 the bags.

9 42282. On and after July 1, 2015, a store as defined in
10 paragraph (3) of subdivision (g) of Section 42280, shall comply
11 with the same requirements of this article that are imposed upon
12 a store, as defined in paragraph (1) or (2) of subdivision (g) of
13 Section 42880.

14 15 Article 3. Plastic Bag Collection

16
17 42283. (a) (1) On and after January 1, 2013, a store, as defined
18 in paragraphs (1) and (2) of subdivision (g) of Section 42280, shall
19 place a plastic bag collection bin at the store in a manner that is
20 visible and easily accessible to the customer, and that is clearly
21 marked to notify customers that the collection bin is available for
22 the purpose of collection and recycling of plastic single-use
23 carryout bags and plastic reusable bags.

24 (2) The requirement of this subdivision shall apply to a store
25 notwithstanding that the store is prohibited from providing
26 single-use carryout bags to its customers.

27 (b) All plastic bags collected by the store shall be collected,
28 transported, and recycled in a manner that does not conflict with
29 the local jurisdiction's source reduction and recycling element,
30 pursuant to Chapter 2 (commencing with Section 41000) and
31 Chapter 3 (commencing with Section 41300) of Part 2.

32 33 Article 4. Reusable Grocery Bags

34
35 42287. (a) On and after July 1, 2015, a reusable grocery bag
36 shall meet all of the following requirements:

37 (1) (A) Be designed and manufactured to withstand, at a
38 minimum, 125 uses.

1 (B) For purposes of this paragraph, “125 uses” means the
2 capability of carrying a minimum of 22 pounds 125 times over a
3 distance of at least 175 feet.

4 (2) Is machine washable or made from a material that can be
5 cleaned and disinfected.

6 (3) Have printed on the bag, or on a tag attached to the bag that
7 is not intended to be removed, and in a manner visible to the
8 consumer the following information:

9 (A) The name of the manufacturer.

10 (B) The location (country) where the bag was manufactured.

11 (C) A recycling symbol or end-of-life management instructions.

12 (D) The percentage of postconsumer recycled material, if any.

13 (4) It shall not contain lead, cadmium, or any other heavy metal
14 in toxic amounts. This requirement shall not affect any authority
15 of the Department of Toxic Substances Control pursuant to Article
16 14 (commencing with Section 25251) of Chapter 6.5 of Division
17 20 of the Health and Safety Code and, notwithstanding subdivision
18 (c) of Section 25257.1 of the Health and Safety Code, the reusable
19 grocery bag shall not be considered as a product category already
20 regulated or subject to regulation.

21 (5) If the reusable grocery bag producer makes a claim that it
22 is recyclable, the producer shall demonstrate compliance with the
23 regulations adopted by the Federal Trade Commission.

24 (b) In addition to the requirements in subdivision (a), a reusable
25 grocery bag made from plastic shall meet all of the following
26 requirements:

27 (1) On and after July 1, 2016, be made from a minimum of 20
28 percent postconsumer recycled material, except as provided in
29 subdivision (d).

30 (2) In addition to the information required to be printed on the
31 bag or on a tag, pursuant to paragraph (3) of subdivision (a), all
32 of the following information shall be printed on the bag, or on a
33 tag that complies with that paragraph:

34 (A) A statement that the bag is a reusable bag and designed for
35 at least 125 uses.

36 (B) Instructions to return the bag to the store for recycling or
37 to another appropriate recycling location.

38 (c) A plastic reusable grocery bag that also meets the
39 specifications of the American Society of Testing and Materials
40 (ASTM) Standard Specification for Compostable Plastics D6400,

1 as published in September 2004, is not required to meet the
2 requirements of paragraph (1) of subdivision (b), but shall be
3 labeled in accordance with the applicable state law regarding
4 compostable plastics.

5 (d) (1) If a plastic reusable grocery bag producer is unable to
6 obtain sufficient amounts of postconsumer recycled material to
7 comply with this article within a reporting period because of
8 unavailability, the producer shall demonstrate to the department
9 the actions taken by that plastic reusable grocery bag producer to
10 find that postconsumer recycled material.

11 (2) A plastic reusable grocery bag producer making the
12 demonstration in paragraph (1) shall make a reasonable effort to
13 identify available supplies of postconsumer recycled material
14 before submitting a certification containing this information to the
15 department pursuant to Section 42288.

16 (3) A plastic reusable grocery bag producer shall include the
17 greatest amount of postconsumer recycled material possible in the
18 reusable grocery bag, even if this amount is less than required by
19 paragraph (1) of subdivision (b) and shall indicate the percentage
20 that is postconsumer recycled material.

21 42288. (a) On or before January 1, 2015, and on January 1
22 every two years thereafter on a schedule and in a manner
23 determined by the department, a reusable grocery bag producer
24 shall submit a certification to the department for each type of
25 reusable grocery bag that is manufactured, imported, sold, or
26 distributed in the state and provided to a store for sale or
27 distribution that meets the requirements of Section 42287.

28 (b) A reusable grocery bag producer shall submit a fee, as
29 established pursuant to subdivision (e), to the department with
30 each certification submitted.

31 (c) The department shall provide a system to submit
32 certifications online.

33 (d) On and after July 1, 2015, the department shall publish a
34 list on its Internet Web site that includes both of the following:

35 (1) The name, location, and appropriate contact information of
36 a reusable grocery bag producer that is in compliance with this
37 article.

38 (2) The reusable grocery bags that are in compliance with this
39 article.

1 (e) The department shall establish a certification fee schedule
2 that will generate fee revenues sufficient to cover all of the
3 department's costs to enforce this article. Fee revenues shall not
4 exceed the amount necessary to cover the department's reasonable
5 costs to enforce this article.

6 (f) The department may inspect and audit a reusable bag
7 producer subject to this article with all costs associated with the
8 audit being paid for by the reusable grocery bag producer.

9 (g) The department may test any reusable bag manufactured by
10 a reusable bag producer and provided to a store for sale or
11 distribution for compliance with this article and the regulations
12 adopted pursuant to this article.

13 (h) The department may enter into an agreement with other state
14 entities that conduct inspections to provide necessary enforcement
15 of this article.

16 (i) Notwithstanding Section 42289.5, any violation of this article
17 shall be subject to an administrative civil penalty assessed by the
18 department in an amount not to exceed five hundred dollars (\$500)
19 for the first violation. A subsequent violation may be subject to
20 an increased penalty of up to five hundred dollars (\$500) per
21 violation, not to exceed five thousand dollars (\$5,000) per violation.

22 (j) The department shall deposit all certification fees paid
23 pursuant to this article into the Reusable Bag Account, which is
24 hereby created in the Integrated Waste Management Fund in the
25 State Treasury. The moneys deposited in the Reusable Bag Account
26 shall be expended by the department, upon appropriation by the
27 Legislature, to assist the department with its costs of implementing
28 this article.

29 (k) The department shall deposit all penalties collected pursuant
30 to subdivision (i) for a violation of this article into the Penalty
31 Subaccount, which is hereby created in the Reusable Bag Account.
32 The moneys in the Penalty Subaccount shall be expended by the
33 department, upon appropriation by the Legislature, to assist the
34 department with its costs of implementing this article.

35
36 Article 5. Reporting Requirements
37

38 42289. (a) On or before January 1, 2016, the department shall
39 submit a report to the Legislature in accordance with Section 9795
40 of the Government Code, regarding the effectiveness of this chapter

1 and recommendations for statutory changes to increase
2 effectiveness, which shall include all of the following:

3 (1) A compilation of state cleanup data to evaluate pollution
4 reduction.

5 (2) Recommendations to further encourage the use of reusable
6 grocery bags by customers and stores.

7 (3) An evaluation of the requirements for reusable bags specified
8 in Section 42287.

9 (4) Distribution of recycled paper bags.

10 (5) Number and type of violations.

11 (b) The department shall coordinate with other state and local
12 agencies in compiling this report to maximize existing efforts and
13 resources in the areas of litter reduction, water quality, and
14 environmental protection.

15 (c) Pursuant to Section 110231.5 of the Government Code, this
16 section is repealed on January 1, 2017.

17
18 Article 6. Enforcement
19

20 42289.5. (a) A city, a county, a city and county, or the state
21 may impose civil liability in the amount of five hundred dollars
22 (\$500) for the first violation of this chapter, one thousand dollars
23 (\$1,000) for the second violation, and two thousand dollars
24 (\$2,000) for the third and subsequent violations.

25 (b) Any civil penalties collected pursuant to subdivision (a)
26 shall be paid to the office of the city attorney, city prosecutor,
27 district attorney, or Attorney General, whichever office brought
28 the action. The penalties collected pursuant to this section by the
29 Attorney General may be expended by the Attorney General, upon
30 appropriation by the Legislature, to enforce this chapter.

31 (c) This section does not apply to a violation of Article 4
32 (commencing with Section 42287).